

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay Service)	CG Docket No. 10-51
Program)	

To: The Commission

REPLY COMMENTS OF GALLAUDET UNIVERSITY

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Date: June 16, 2011

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SUMMARY

Gallaudet University supports the Commission's goals of preventing and eliminating fraudulent and abusive practices in the Video Relay Services Program. The Commission can achieve its goals without imposing all of the proposed certification requirements on VRS providers, like Gallaudet, who only operate Call Centers. The proposed requirements that all VRS service providers, including Call Centers, submit extensive documentation to the FCC and obtain common carrier status before they can qualify for VRS certification, are largely irrelevant to the very limited services that Gallaudet and similarly situated Call Centers provide. Moreover, there is no evidence that the proposed certification requirements, when applied to organizations that only operate Call Centers, would effectively combat potential VRS fraud.

In Gallaudet's reply comments, Gallaudet recommends that the Commission eliminate its proposed requirement that Call Centers demonstrate their status as common carriers. Furthermore, Gallaudet recommends that the Commission substitute its proposed certification requirement for VRS providers who only operate Call Centers with a less burdensome, alternative registration process that is appropriately designed for the specific services and functions that VRS Call Centers fulfill, with the focus appropriately placed on interpreter service quality. Once full-fledged VRS service providers complete the FCC's new certification process, and begin operating under the new VRS regulatory regime, that should suffice to prevent fraud and abuse without imposing duplicative and onerous certification regulations on VRS Call Centers. Thus, the Commission should narrow its regulatory focus to ensuring that organizations that only operate Call Centers provide high quality interpreting services in compliance with the FCC's rules.

Any new certification or registration regime for Call Centers should include a transition period so that Call Centers can continue offering their services to the deaf and hard of hearing community until such time as the FCC can process all VRS certification applications. The recently revised October 1, 2011 deadline for the new VRS rules to become effective is not far away. To meet that deadline, the FCC will have to review all comments and entertain inevitable ex parte presentations, adopt new or revise VRS certification rules and procedures, face the possibility of petitions for reconsideration of those rules, accept new applications for VRS service providers, and, grant those applications, all in the next 90 days. That is, needless to say, an aggressive timetable for this agency. To avoid a repeat of the recent waiver process, which involved considerable time and legal expense by many interested parties, the FCC should not wait until September 30 to inform the VRS sector of its contingency plans should it be unable to meet its regulatory deadlines.

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Gallaudet University, by its attorneys, hereby submits reply comments in the above captioned proceeding pursuant to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") released on April 6, 2011.¹ In support hereof, the following is respectfully shown:

I. Statement of Interest

Gallaudet University is a not-for profit educational institution that offers VRS interpreting services to interested persons. Through and with the technical assistance of its contractor, Sorenson Communications, Inc., Gallaudet University's VRS interpreting center allows deaf and hard of hearing colleagues, family, and friends to conduct business or stay in touch through the Internet at no cost to the user. Gallaudet has a keen interest in the FCC's regulatory proceeding given that the VRS program was designed for the community of users that constitute the very heart and soul of this historic institution. The proposed regulations could, at a minimum, have an adverse financial impact on the

¹ *In the Matter of Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51, FCC 11-54 (2011) (hereinafter "Order" or "FNPRM").

University and its ability to be of service to deaf and hard of hearing people. Moreover, the proposed regulations would negatively impact deaf and hard of hearing individuals because they would have to sacrifice the numerous benefits and options that come with having reputable and responsible interpreters on a university's campus. Indeed, the very survival of Gallaudet's VRS Call Center in large part hinges upon the regulatory decisions that the FCC will render in the coming weeks of this proceeding.

A. Identity of Gallaudet University

Gallaudet University is the world's only university that purposely designs all of its programs and services to accommodate deaf and hard of hearing students. An Act of Congress founded the University in 1864 and President Abraham Lincoln signed its federal charter. Gallaudet's mission is to be a bi-lingual and diverse institution of higher education that ensures the intellectual and professional advancement of its students through American Sign Language and English. Gallaudet endeavors to prepare its students for careers in a technological, competitive and rapidly changing world. Gallaudet also aims to become the leading international resource for research, innovation, and outreach related to the global community of deaf and hard of hearing individuals.

Gallaudet Interpreting Service ("GIS") is a department within Gallaudet University that manages and operates Gallaudet's Video Relay Service (VRS) interpreting center (also referred to throughout these comments as the "Call Center"). Gallaudet University is the only not-for-profit educational institution in the United States that offers VRS interpreting services. Since 2003, Gallaudet has been a subcontractor for Sorenson Communications. Sorenson Communications, an eligible provider of VRS, is certified in the State of Utah and provides VRS operational and technical support and

services, including licensing its VRS systems, managing all call intake, routing interpreted calls, including e911 services, seeking compensation for its VRS services, and ensuring that only proper minutes are submitted for compensation. Since its inception, Gallaudet has not marketed VRS services under its name or received VRS calls for interpreting unless Gallaudet received the calls through Sorenson Communications' call queue.

B. Gallaudet University's VRS Interpreting Services

Unlike full-fledged VRS providers, Gallaudet limits its functions to interpreting services. Gallaudet receives calls through Sorenson's automatic call distribution system. Sorenson's automatic call distribution system distributes calls in order to any of Sorenson's numerous Call Centers in North America, including Gallaudet's. Therefore, no affiliated person can be sure that his or her call will be handled by Gallaudet's interpreting center. The working relationship between Sorenson and Gallaudet eliminates any incentive or ability to inflate Gallaudet's revenue by placing or extending calls that would otherwise not have been made. Gallaudet operates its Call Center with the utmost integrity. Moreover, Gallaudet's compliance with the FCC's VRS rules is essential to the ability of Sorenson to receive reimbursement for calls handled through Gallaudet's interpreting center.

Gallaudet's decision to enter into the VRS services program and become an interpreting center was made after an extensive evaluation of the University's needs and interests and an extensive review of competitive service offerings. Gallaudet began investigating Video Relay Services as an adjunct to its educational mission as early as the summer of 2000. Foremost in consideration during this period was the potential for VRS

to improve communications for deaf and hard of hearing persons and the opportunity for VRS to directly benefit interpreting students.

In 2002, Gallaudet University began operating a VRS Call Center for two reasons. First, Gallaudet wanted to improve communications for its deaf students, employees, and graduates. Second, Gallaudet was in the process of developing an undergraduate major in Interpreting, and therefore, the University believed that a working relationship with an eligible VRS provider would give its Interpreting students the opportunity to familiarize themselves with an innovative and invaluable interpretation service. Gallaudet chose to concentrate its resources on providing high quality interpreting services nationwide, and a venue for qualified students to gain real world experience in interpreting, rather than developing GIS into a full-fledged VRS provider.

In 2003, in order to expand its interpreting services and to avoid the instability and vagaries of short-term vendor commitments, Gallaudet issued a Request for Proposal to a number of VRS vendors. Key considerations in that evaluation process included: the need to employ highly qualified interpreters; technological components and offerings; call volume; quality standards; professional reputation and training for video interpreters. Gallaudet continues each year to assess these and other metrics with respect to its interpreting services and its vendor relations. As with any call center in the United States, Gallaudet is certainly free to make changes to these arrangements should it determine that it is in the University's best interests to do so.

As a result of Gallaudet's commitment to education and assistance, Gallaudet's Call Center has proven to be a great success and a model of its kind. Gallaudet has continuously provided high quality interpreting services nationwide and enabled qualified

students to receive good wages that can be applied to their tuition, while earning degrees in fields that will serve the deaf and hard of hearing community at the Bachelor's, Master's and Doctorate levels.

In addition to providing high quality interpreting services, Gallaudet ensures that its VRS centers do not engage in fraudulent or abusive practices. Gallaudet hires, manages and assists in the training of all of its interpreters at its Call Center and strictly complies with applicable FCC rules and TRS obligations. Gallaudet also establishes and enforces its own, additional standards for hiring, management, training and other workplace practices to ensure that Gallaudet remains at the forefront of best practices and services for VRS callers and interpreters.

Although Gallaudet's VRS interpreting center constitutes a small percentage of annual VRS call traffic handled throughout the United States, the revenues generated by this essential service are critical and necessary to the fulfillment of Gallaudet's mission. Without these revenues, Gallaudet would need to find other sources of revenue, which can be highly problematic in the current economic climate. If, due to regulatory decisions made by the FCC, Gallaudet should be deemed unable to operate its Call Center, that will adversely impact not only Gallaudet's financial status, but, its ability to train, educate and provide essential employment opportunities for the Nation's largest population of deaf and hard of hearing individuals here in the Greater Washington Metropolitan Area.

II. Summary of the FNPRM and Initial Comments

The Commission found in its *Report and Order* accompanying the *FNPRM* that the TRS Fund is vulnerable to fraud and abuse.² In response to this determination, the Commission proposed revisions to its existing rules with the hope of eliminating fraudulent and abusive practices.³ To this end, the Commission sought comment on its proposed requirement that providers of Internet-based VRS services be ineligible to receive compensation from the TRS Fund unless they receive FCC certification.⁴ The Commission also sought comment on its proposal that it will not certify VRS providers, presumably even those that only operate Call Centers, unless they demonstrate their status as common carriers, own and operate facilities associated with VRS call centers, and among other regulatory requirements, submit substantial documentation to prove that they do not contract with non-certified third parties who provide interpreting and Call Center functions.⁵

The consensus among VRS service providers and Call Centers is that the FCC's "one regulatory size fits all" proposal is inappropriate; there is a need to refine the VRS certification process so that the regulatory burdens are appropriate to the VRS functions performed. For example, entities that are themselves Call Centers such as SignOn: A Sign Language Interpreting Resource, Inc., and entities that are experienced VRS operators such as AT&T, have suggested that the Commission adopt a separate, less highly regulated certification category, which would entail fewer regulations, aptly

² Order ¶ 4-7.

³ FNPRM ¶ 95.

⁴ *Id.* at ¶ 97.

⁵ *Id.*

tailored for entities that only want to operate Call Centers or provide translation services.⁶ Furthermore, entities such as Sorenson Communications have recommended that the FCC should eliminate its proposed requirement that all VRS providers obtain common carrier status; they note that there is no correlation between common carrier status and the types of Internet based interpreting services that are provided by VRS Call Centers.⁷

In addition, there is a clear consensus, expressed by interested parties such as AT&T and Sorenson Communications, that the Commission should adopt some sort of transition period. This is a critical need to allow eligible providers to continue providing interpreting services while they complete the FCC's yet-to-be-adopted VRS certification/application process.⁸

III. Reply Comments

Gallaudet joins the chorus of comments in support of the Commission's overall efforts to prevent fraudulent and abusive VRS practices, and to serve as the sole regulator of VRS providers. Gallaudet is concerned, however, with some of the Commission's aforementioned regulatory proposals because they would place inordinate and inappropriate regulatory burdens on interested organizations who wish only to provide interpreting services to the deaf and hard of hearing individuals. Moreover, it is unclear how the Commission's proposals, as applied to Call Centers, would effectively combat fraud and abuse. For instance, forcing Gallaudet University to become a regulated telecommunications common carrier (assuming a not-for-profit university could lawfully

⁶ Comments of AT&T, CG 10-51 (filed June 1, 2011); Comments of SignOn: A Sign Language Interpreting Resource, Inc., CG 10-51 (filed June 1, 2011).

⁷ Comments of Sorenson Communications, Inc., CG 10-51 (filed June 1, 2011).

⁸ Comments of AT&T, CG 10-51 (filed June 1, 2011); Comments of Sorenson Communications, Inc., CG 10-51 (filed June 1, 2011).

be deemed a common carrier) has no obvious correlation to the FCC's goal of eliminating fraud and abuse from the VRS program.

The Commission has recently implemented safeguards to prevent fraud and abuse in the TRS/VRS programs. These new regulatory safeguards, combined with comprehensive certification requirements for full-fledged VRS providers, ought to successfully prevent fraud and abuse in these programs. At a minimum, as some of the other interested parties in this proceeding have noted, the FCC ought to give the new regulations time to work, and assess their effectiveness, before rushing to adopt additional, quite clearly burdensome and expensive regulations that might have no positive impact on the FCC's anti-fraud objectives.

Certainly, with respect to Call Centers, the Commission should focus its attention on ensuring that they provide high quality interpreting services, and, that they are in some meaningful way associated with a fully-regulated VRS service operator. There is a clear consensus among the commenters that there should be a distinct category of FCC certification or "registration" that applies only to Call Centers/interpreting services; this service category would not require the full litany of regulations that the FCC would require of full service VRS providers.⁹

**A. The Commission should not Require
VRS Call Centers to be Common Carriers**

The Commission should eliminate its proposed requirement that all VRS service providers, including Call Centers, be qualified as common carriers.¹⁰ By their very nature and design, Call Centers/interpreting services do not meet historic definitions of a

⁹ Comments of AT&T, CG 10-51 (filed June 1, 2011); Comments of SignOn: A Sign Language Interpreting Resource, Inc., CG 10-51 (filed June 1, 2011).

¹⁰ *Id* at App. D.

"common carrier." These interpreting services are Internet-based, for one thing. Call Centers do not "hold themselves out indiscriminately to the public" when providing services. To the contrary, VRS Call Centers serve a very specific type of customer -- deaf and hard of hearing people -- who communicate using VRS interpreting services in a way that is quite different from typical telecommunications voice and data services. For their part, VRS Call Centers provide very limited services, largely limited to interpreting services, while another entity, the VRS service provider, performs the majority of technical tasks associated with a VRS "call," such as call routing, billing and the provision of network infrastructure. Apart from the fact that VRS Call Centers simply don't fit the historic and legal definition of a "common carrier,"¹¹ there is no record evidence that imposing common carrier status on VRS Call Centers will do anything to prevent fraud and abuse in the VRS program.

Because the Commission has already adopted safeguards to prevent fraud and abuse of the TRS Fund, there is no need to impose common carrier and other regulatory burdens on Call Centers to meet those regulatory objectives. As AT&T observed in its comments, in the last three years the Commission has undertaken wide-ranging reforms to prevent and eliminate opportunities for VRS providers to engage in fraud or abuse of

¹¹ *Nat'l Ass'n of Regulatory Util. Comm'r v. F.C.C.* 525 F.2d 630, 640-44 (D.C. Cir. 1976) (defining "common carrier" as "any person engaged in rendering communication service for hire to the public" and explaining that Specialized Mobile Radio Systems are not common carriers, and are therefore, exempt from the regulations that the F.C.C. imposes on common carriers, "We therefore conclude that nothing in the record indicates any significant likelihood that SMRS will hold themselves out indifferently to serve the user public. While it is undisputed that they would be permitted so to hold themselves out if they desired, that is not sufficient basis for imposing the burdens that go with common carrier status."). See also *Southwestern Bell Telephone Co. v. F.C.C.*, 19 F.3d 1475, 1480 (D.C. Cir. 1994) (citing *Nat'l Ass'n of Regulatory Util. Comm'r v. FCC*, 525 F.2d 630, 640-44 (D.C. Cir. 1976)); *Chadmoore Comm. v. F.C.C.* 113 F.3d 235, 237 (D.C. Cir. 1997) (citing *Nat'l Ass'n of Regulatory Util. Comm'r v. F.C.C.*, 525 F.2d 630, 634 (D.C. Cir. 1976)).

the TRS Fund.¹² Specifically, the Commission has stated that providers may not offer financial or other incentives in an attempt to increase the length or frequency of TRS calls;¹³ imposed 10 digit number assignment obligations on providers;¹⁴ set standards for how providers must measure conversation time,¹⁵ stated that the TRS Fund does not compensate providers for calls where one of the parties is not a voice user;¹⁶ required that TRS providers' senior executives certify to their submissions to the TRS Administrator;¹⁷ reduced TRS compensation rates;¹⁸ and required compliance with whistleblower rules and audits.¹⁹

These anti-fraud provisions are relatively new; insufficient time has passed to assess the effectiveness of these reforms. These regulatory mandates are extensive and clearly aimed at preventing any repeat of the fraud and abuse that has plagued the VRS program in recent years. Because these FCC regulations will likely ensure that Call Center operators do not engage in fraudulent and abusive practices, the FCC need not

¹² Comments of AT&T, CG 10-51 (filed June 1, 2011).

¹³ *Id.* (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03-123, *Declaratory Ruling*, ¶ 13 (rel. May 28, 2008)).

¹⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, *E911 Requirements for IP-Enabled Service Providers*, CG Docket 03-234, WC Docket 05-196, Report and Order (rel. June 24, 2008); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, *E911 Requirements for IP-Enabled Service Providers*, CG Docket 03-123, CC Docket 98-67, WC Docket 05-196, Second Report and Order (rel. Dec. 19, 2008)).

¹⁵ *Id.* (citing Public Notice, "TRS Providers Seeking Compensation from Interstate TRS Fund must comply with Standard Rounding Principles in Measuring the Conversation Time of the TRS Call," DA 09-211, CG Docket 03-123 (rel. Feb. 10, 2009)).

¹⁶ *Id.* (citing *Structure and Practices of the Video Relay Service Program*, CG Docket 10-51, *Declaratory Ruling*, ¶ 8 (rel. Feb. 25, 2010)).

¹⁷ *Id.* (citing *Structure and Practices of the Video Relay Service Program*, CG Docket 10-51, *Declaratory Ruling*, ¶6 (rel. May 27, 2010)).

¹⁸ *Id.* (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03-123, Order (rel. June 28, 2010)).

¹⁹ *Id.* (citing *Structure and Practices of the Video Relay Service Program*, CG Docket 10-51, Report and Order (rel. April 6, 2011)).

impose additional regulatory burdens on the relatively small (and in many instances not for profit) organizations that provide only Call Center and interpreting services.

Gallaudet agrees with those commenters who observed that the common carrier requirement for VRS certification is a vestige of a pre-Internet era that no longer makes sense to today's VRS service providers. As Sorenson Communications comment states, organizations that only operate Call Centers are not necessarily telecommunications carriers, and therefore, the requirement that they obtain common carrier status might be inconsistent with Section 225, which requires only that common carriers provide TRS service, not vice versa.²⁰

For its part, Gallaudet University has no interest in becoming a common carrier, and, as a not for profit educational institution created by the U.S. Congress, its Congressional charter might preclude it from becoming one. There is no evidence whatsoever that imposing a common carrier requirement on VRS Call Centers would promote any public policy objectives. Consequently, the FCC should not require Call Centers and interpreting services to become telecommunications common carriers.

B. The Commission Should Eliminate Unnecessary and Burdensome Regulatory Requirements for VRS Call Centers and Interpreting Services

Gallaudet supports the FCC's decision to assume exclusive regulatory responsibility for VRS services and service providers. At the same time, Gallaudet shares the view expressed by many, that organizations that only operate Call Centers should be less heavily regulated than full-fledged VRS providers. The Commission's proposed application requirements for certification, when applied to organizations that

²⁰ Comments of Sorenson Communications, Inc., CG 10-51 (filed June 1, 2011) (citing 47 U.S.C. § 225(c)).

only operate Call Centers, would be unduly burdensome and unnecessary to meet the Commission's goal of eliminating abusive and fraudulent VRS practices.²¹ The FCC should adopt a VRS certification or registration procedure that is specifically tailored to the unique and limited services provided by Call Centers and interpreting services.

That should be the primary objective of the FCC in this FNPRM: to establish regulations that are appropriately tailored to the specific VRS services offered by the regulated entities. No one could legitimately complain about being subjected to new VRS regulations so long as those regulations make sense and are calibrated to the specific VRS services provided by the regulated entities.

With these objectives in mind, it is apparent that some of the proposed regulations would be of limited value to the FCC, and, make little sense for Call Center services. The Commission's proposed requirements that VRS providers that only operate Call Centers submit a list of employees, a copy of the Call Center's lease, and copies of equipment licenses and contracts with vendors, are all unduly burdensome and fail to further the Commission's goal of preventing fraud and abuse.²²

The "list of employees" proposal is an example of a VRS certification requirement that would not appear to further any FCC regulatory goals. Gallaudet is located in Washington, D.C., a notoriously transient city, where even Gallaudet University experiences regular turn-over of its employees. A list of employees that Gallaudet would have to submit to the FCC in its initial VRS application would be inaccurate shortly after the FCC granted that application. And, it's not apparent that the FCC would be better served by having an outdated employee list in its files than it would

²¹ FNPRM ¶ 97 and App. D.

²² *Id.*

be by being able to routinely contact Call Centers to ask for information about employees, should that be necessary.

On the other hand, there may be valid reasons for the FCC to want to know the relative size of a particular VRS Call Center. For instance, VRS call reimbursement records should have some correlation to the size of a particular Call Center and might indicate whether Call Center operators are engaging in fraudulent or abusive practices. Consequently, instead of requiring that Call Centers submit lists of their employees' names, Gallaudet suggests that Call Centers applying for VRS certification be required to submit the approximate number of full and part time employees that will be working at their Call Center for the coming year. That regulation bears a direct relation to the FCC's anti-fraud objectives, it is finely tuned and of little regulatory burden to the applicants, and, it would help the agency track and retain only that information that it needs to promote and protect the VRS program.

Similarly, it is unclear how copies of deeds, leases, proof of purchases and technology license agreements will help the FCC ensure that Call Centers do not engage in fraudulent or abusive VRS practices.²³ None of this data is relevant to the quality and integrity of services offered by a given VRS Call Center. And, ownership of technology is no safeguard against abusive or fraudulent conduct. If the FCC wants to focus on fraud prevention and quality of service, there surely must be a more direct way of doing that than by asking for a laundry list of the various components employed in providing VRS services.

²³ *Id.*

From Gallaudet's perspective, any Call Center interested in obtaining FCC certification should be able to meet a core set of criteria that are perfectly attuned to the services they provide. A Call Center should be expected to explain in its application how it trains, manages and controls the quality and integrity of its interpreters; it should explain its procedures for complying with Call Center-specific FCC regulations; and, it should provide the FCC with the names and accurate contact information of the individuals who are responsible for the oversight and management of the Call Center. To the extent that the Call Center relies on another entity to provide the balance of VRS services that are required under the FCC's rules and under the Communications Act, the Call Center applicant should also be required to explain that arrangement and identify the entity or entities that are providing those services, subject to FCC regulation. Moreover, if the FCC needs further information from a Call Center for audits or investigation purposes, it should have ready access to all relevant documents by contacting the Call Center's responsible officials, which would be part of the FCC registration or certification process. These should be the core requirements for VRS Call Centers and interpreting services that wish to be certified by the FCC.

The Commission itself has recognized that its proposed VRS regulations should promote high quality VRS services: “[W]e propose requiring evidence of an applicant’s ability to comply with our rules governing the qualifications of CAs, including speed of answer, facility redundancy to ensure continuance of the service, and other operational and technical standards designed to assure provision of a service that is functionally equivalent to voice telephone service.”²⁴ If the FCC is to take on the function of

²⁴ *Id.*

regulating VRS Call Centers, it ought to ensure that those regulations are primarily aimed at promoting high quality services, while preventing fraudulent conduct.

In addition to having no obvious regulatory value to the FCC, some of the proposed certification requirements may be in violation of federal law. As Sorenson Communications noted in its comment, the Commission's proposed documentation may violate the *Paperwork Reduction Act*, which requires that the FCC minimize the burdens of information collection.²⁵ Surely, many of the proposed regulations would appear to impose significant information collection burdens, while doing little to improve the quality of VRS Call Centers services or combat fraud.

Sorenson also noted that some of the Commission's proposed documentation requirements are exempt from production under the *Freedom of Information Act*.²⁶ The *FNPRM* proposes that VRS providers submit personally identifiable information from people in the form of employee lists and contracts with interpreters and management which is exempt under the personal privacy exemption.²⁷ Furthermore, all of the information sought is likely subject to protection as confidential business information.²⁸ If that is the case, and given Gallaudet's practical concern that this information will be outdated almost as soon as it is filed with the FCC, the FCC ought to consider better and leaner regulatory alternatives.

²⁵ Comments of Sorenson Communications, Inc., CG 10-51 (filed June 1, 2011) (citing 44 U.S.C. § 3501 *et seq.*).

²⁶ *Id.* (citing 5 U.S.C. § 552 *eq seq.*).

²⁷ *Id.* (citing 5 U.S.C. § 552(b)(6)).

²⁸ *Id.* (citing 5 U.S.C. § 552(b)(4)).

C. Registration as an Alternative to Certification is Appropriate for Organizations that only Operate Call Centers

Proposed rule Section 64.604(c)(5)(iii)(N) would require that all certificated VRS providers provide the “core components” of VRS; it prohibits them from contracting with non-certified third parties to provide interpreting and Call Center functions.²⁹ In order to become certified, the Commission has proposed that applicants provide the aforementioned documentary evidence for the purpose of demonstrating that “the applicant owns and operates facilities associated with TRS call centers.”³⁰ Clearly, the Commission’s proposal is based on the notion that “ownership and operation of call centers” is the *only* way that a VRS provider can demonstrate compliance with the VRS service quality and fraud prevention requirements.

Gallaudet joins the majority of commenters who are opposed to that regulatory conclusion. Rather, as explained throughout the comments, the twin policy goals of quality assurance and fraud prevention can be attained through direct FCC oversight of the various components that contribute to VRS services, even if those components are not commonly owned or operated. That does not mean that the same, comprehensive set of VRS regulations must apply to all of these service components, and, it does not mean that just one corporate entity must provide all of these VRS services to serve the needs of deaf and hard of hearing individuals.

In virtually all other communications services that are subject to FCC regulation, the FCC imposes different regulations on entities based on the specific nature of the services that they provide. For instance, radio and television broadcasters do not

²⁹ FNPRM App. E.

³⁰ FNPRM ¶ 97 and App. D.

manufacture TV and radio receivers; cellphone/PCS wireless carriers do not manufacture mobile handsets; cable TV operators do not manufacture set-top boxes or the cables that run to our homes; broadcast and cable programming content can come from a wide variety of sources unrelated to the owners of networks. Different entities routinely work together to provide customers with seamless, end-to-end services; that does not mean that the FCC regulates each component of that service the same way. Handset manufacturers are not regulated the same way that the FCC regulates the wireless carriers that sell handsets. Many, if not most, broadcasters and wireless service providers do not own their own antenna towers or other structures. The structure owners are subject to a separate regulatory regime, which in certain cases requires a registration process that is far less extensive than the typical licensing procedures for radio services.

The FCC has a key role to play with respect to each of these participants in these communications services, but its regulatory role is limited to the specific function or service offered by a given entity. Because Gallaudet only operates Call Centers, the FCC should not regulate Gallaudet in the same way that it regulates full-fledged VRS providers.

Indeed, there is no empirical evidence that requiring all elements of a VRS service to be offered by one entity, a certificated VRS service operator, would promote the FCC's regulatory goals. Sprint Nextel accurately asserts that "it is unclear, however, how call center ownership and operation ensures that an entity seeking to provide VRS and other Internet-enabled TRS will provide a functionally equivalent service or, for that matter, provide a service that complies with the law."³¹ Sprint Nextel refers to examples

³¹ Comments of Sprint Nextel, CG 10-51 (filed June 1, 2011).

of VRS providers who owned and operated call centers, but failed to comply with the law:

(1) in the case of Viable, shuttered its operations and resulted in several of its executives pleading guilty to defrauding the government, R&O at ¶ 4 and fn. 14; and (2) in the case of Purple, led to a Consent decree pursuant to which Purple has agreed to make voluntary payment to the United States Treasury and execute a note to enable to TRS Fund to recover upwards of \$19,000,000 Purple received from the TRS Fund for the provision of VRS that may have violated the Act and FCC's rules.³²

The FCC can effectively prevent fraud without requiring that VRS providers own and operate their Call Centers. Even though Sorenson does not own or operate Gallaudet's Call Center, Gallaudet's Call Center has proven to be a great success and a model of its kind. Gallaudet has continuously provided high quality interpreting services nationwide, while providing a venue for qualified students to gain real world experience in interpreting. Furthermore, Gallaudet has established and enforced high standards for hiring, management and training of VRS interpreters. Clearly, as shown by Gallaudet's example, VRS providers who only operate Call Centers can provide high quality services without having to comply with the entire list of regulatory requirements that would apply to full-fledged VRS service providers..

Diversity of ownership and decentralized control of the various components of VRS services has led to improvements in service quality at lower costs to consumers. It is important for the FCC to support the existence of different types of organizations that concentrate their resources on operating only Call Centers. Call Centers are operated by different types of organizations, deaf and hard of hearing people benefit from different organizations' creativity and different approaches to VRS interpreting. For example,

³² *Id.*

ASL Holdings, Inc. is a woman and minority-owned interpreting center; Gallaudet is an educational institution with a decided emphasis on training and best practices; SignOn: A Sign Language Interpreting Resource Inc., is woman-owned.³³ Since diversity of options serves the public interest, the FCC should strive to ensure that its regulations make it possible for organizations that only operate Call Centers to receive certification. The Commission should adopt a more nuanced application process that will allow organizations that only operate Call Centers to receive certification without fulfilling the same requirements as full-fledged VRS providers.

SignOn suggested that the FCC require that VRS providers who only operate Call Centers complete a "registration" process in lieu of the proposed certification process.³⁴ It is not entirely clear how SignOn wants the FCC to administer a registration process. If by "registration" SignOn means that Call Centers would be deemed "approved" by the FCC the moment they submit a "registration" form to the agency, containing information that is relevant to the limited functions performed by Call Centers, then Gallaudet is in complete agreement with that proposal. Nevertheless, SignOn's proposed list of documents that the FCC should require from Call Centers is unnecessarily broad and akin to the same information that full-fledged VRS service providers would be required to file. Whether by a "registration" process, or a more streamlined "certification" process, the FCC should require Call Centers to submit no more than the basic information necessary to maintain regulatory oversight of their interpreting services: basic ownership information, contact information, the identify of their VRS service provider and the number of full and part time employees for the coming year.

³³ Comments of ASL Holdings, Inc., CG 10-51 (filed June 1, 2011); Comments of SignOn: A Sign Language Interpreting Resource, Inc., CG 10-51 (filed June 1, 2011).

³⁴ Comments of SignOn: A Sign Language Interpreting Resource, Inc., CG 10-51 (filed June 1, 2011).

The FCC routinely modifies or reduces its regulatory burdens within the same service category to ensure that its rules are well-suited to the regulated entity. For instance, in “Numbering Resource Optimization; Implementation of Local Competition Provisions of the Telecommunications Act of 1966; Telephone Number Portability,” the FCC exempted small entities with limited services from its requirement that all carriers participate in thousands-block number pooling,

“[i]n addition, because the Commission finds that pooling has less impact on numbering resource exhaust where there is no competition, the Commission declines to impose pooling costs on carriers that are not required to provide LNP operating in areas where there are no competing service providers. The Commission therefore exempts carriers operating in rate centers within the largest 100 MSAs, where they are the only service provider receiving numbering resources, from the pooling requirement in those rate centers.”³⁵

Likewise, the FCC has historically exempted “non-dominant inter-exchange carriers” from burdensome tariff regulations that would apply to larger long distance carriers; the FCC’s regulations acknowledge differences in services, size and resources.³⁶

Gallaudet supports the idea of requiring an eligibility process for all VRS service providers. However, Call Centers that are not owned by VRS service providers should be subject to a simpler registration process along the lines suggested in these and other comments.

³⁵ 68 FR 43003, 43005.

³⁶ *In the Matter of Tariff Filing Requirements for Non-Dominant Carriers*, Memorandum Opinion and Order, CC Docket No. 93-36, 8 FCC Rcd. 6752 (rel. Aug. 18, 1993); 47 C.F.R. § 61.3(y) (stating that a non-dominant carrier is “a carrier not found to be dominant. The nondominant status of providers of international interexchange services for purposes of this subpart is not affected by a carrier’s classification as dominant under §63.10 of this chapter.”); 47 C.F.R. § 61.3(q) (stating that a dominant carrier is “[a] carrier found by the Commission to have market power (*i.e.*, power to control prices).”).

D. The Commission should adopt a Transition Period

Between now and October 1st 2011, the FCC must review comments, adopt with or without revisions its VRS certification proposal, publish its order, address any petitions for reconsideration or appeal; accept, process and grant or deny all VRS certification applications, and field inevitable questions that will accompany the processing of those applications.³⁷ If the FCC cannot meet this aggressive timetable, then interpreting centers such as Gallaudet's will not be in compliance with the FCC's rules and may be compelled to shut down.

The "Temporary Waiver" process that the FCC put in place in April, to bridge the gap until the June 1 effective date of its new VRS rules, was an ineffective process. Numerous, well-meaning parties spent many hours in assembling the myriad documents that the FCC required for those waivers, only to learn at the very last hour that the FCC would not even begin to review their waiver requests. Surely, the public interest would not be served by a repeat of that exercise.

By even the most optimistic standards, it is virtually guaranteed that at least some if not all of the same entities that submitted Temporary Waivers, will not receive VRS certification grants from the FCC by its October 1 deadline for the new rules to become effective. Without some alternative, if only a temporary process, in place Call Centers like Gallaudet's could once again face the risk of being deemed in violation of the FCC's new regulations come October 1. Accordingly, it is by no means too early for the FCC to address this very real possibility.

³⁷ *In the Matter of Structure and Practices of the Video Relay Service Program*, Order Suspending Effective Date, CG Docket No. 10-51, FCC 11-96 (rel. May 31, 2011).

A simple solution would be to announce in the next week or two that if the FCC is not prepared to process *and grant* all interested VRS certification applications by October 1, then its *Suspension Order* will be automatically extended for at least an additional 90 days. There are many, many individuals who are directly affected by the procedural decisions that the FCC makes in these proceedings; in fairness to them and to the entire deaf and hard of hearing community, the FCC should soon provide the public with clear and fair guidance as to where this VRS certification process is headed.

CONCLUSION

For the foregoing reasons, Gallaudet University respectfully requests that the Commission not impose common carrier and other regulatory obligations on VRS Call Centers. Instead, the Commission should require VRS Call Centers and interpreting services to complete a simpler registration process that is more carefully aligned with their specific services and VRS obligations. Gallaudet also requests that while the FCC ponders this new certification regime, it allow existing VRS Call Centers to continue providing VRS interpreting services until they can comply with the new rules.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Lula Robinson, a legal administrative assistant in the law firm of Venable LLP, do hereby certify that on this 16th day of June, 2011, copies of the foregoing Reply Comments were sent via electronic mail to the following:

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